IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 6210 of 2001 (S/S)
(Old No. 17145 of 1998)

Havaldar Hayat Singh
Village Dungri, P.O. Chaura
District Almora .....Petitioner

Versus

1. The Union of India
   through the Secretary Ministry of Defence
   New Delhi.
2. Senior Accounts Officer
   Office of the Chief Controller of
   Defence Accounts (P), Allahabad
3. Assistant Record Officer
   Kumaon Regiment
   Abhilekh Karyalaya, Ranikhet

.....Respondents.

Shri V.K. Bisht with Shri D.C.S. Rawat, learned counsel for the petitioner.
Shri Harendra Belwal, learned Standing Counsel for the Union of India.

Hon'ble Prafulla C. Pant, J

By means of the petition, moved under Section 226 of Constitution of India, the petitioner has sought writ in the nature of mandamus, directing the respondents to pay service pension to the petitioner. Also, a writ in the nature of certiorari has been sought quashing order-dated 10.04.1997 (Annexure-6), whereby the petitioner is informed that he is not entitled to service pension.

2. Heard learned counsel for the parties.

3. Brief facts of the case, as narrated in the petition are that the petitioner was appointed as Sepoy in Kumaun Regiment on 07.04.1952. It is alleged by him that he had unblemished record. It is further stated in the petition that the petitioner was dismissed from service but later, on his representation, the matter was reassessed and the order of dismissal was converted into one that of discharge. According to the petitioner, he made several requests to the authority concerned for his service pension but to no avail . Finally, he got impugned order, whereby he was informed that since the petitioner had not completed 15 years of service, as such, he was not entitled to pension in view of the provision contained in Rule 132 of Pension Regulations for Army, 1961. Challenging the discharge as arbitrary one, the petitioner has moved this petition for relief mentioned above.

4. Respondents have contested the petition and filed their counter affidavit in which it has been stated that the petitioner was recruited in the Army on 07.04.1952 and he was discharged on compassionate ground on 08.12.1965, after having rendered total service of thirteen years and two hundred and forty five days. It is further stated in the counter affidavit that the writ petition is highly belated one, as the same is filed after thirty-two years of discharge. It is further stated in this connection that the service record of the petitioner, due to lapse of time, has now been weeded out.

Referring to Rule 132 and 136 of Pension Regulations for Army, 1961, it is asserted that the petitioner is not entitled to service pension unless he has completed fifteen years of qualifying service.

5. Before further discussions, it is pertinent to mention here that Annexure-2, filed by the petitioner itself shows that petitioner was initially dismissed from the service, as he deserted in the face of enemy during OP riddle. It further discloses that order of dismissal was converted into one that of discharge on compassionate ground. As such, the petitioner's claim that he had unblemished record is not supported from the papers relied by himself.

6. Admittedly, the petitioner was discharged from the service of Army after serving the same for a period of thirteen years and two hundred and forty-five days. It is also not disputed that minimum qualifying service for service pension is fifteen years, as required under Rule 132 of Pension Regulations for Army, 1961, as such admittedly, the petitioner is not entitled to the service pension, as he admittedly did not complete the minimum qualifying service.

7. Apart from this, though no limitation is provided for filing the writ petition, the delay of more than thirty two years in filing the writ petition without explanation, makes this Court disinclined to grant any relief, sought by the petitioner, particularly

in view of fact by now service record is also stated to have been weeded out.

8. For the reasons, as discussed above, this petition has no force and the same is liable to be dismissed. The writ petition is dismissed.

Dt. 13.11.2006 **(Prafulla C. Pant, J.)**

S